Release

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Addressing				
From		То		
Jim Zokan/R10/USEPA/US		David Croxton/R10/USEPA/US@EPA		
СС		BCC		
Description			Form Used: Memo	
Subject		Date/Time		
Kalispel wanting and update on PO River Temp TMDL		09/20/2012 11:27 AM		
# of Attachments	Total Bytes	NPM	Contributor	
0	1,802		David Croxton	
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Body

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Please give me a call.

Thanks

James F. Zokan, Environmental Specialist US EPA, Idaho Operations Office 950 W. Bannock Street (Suite 900)

Boise, ID 83702

Office: 208-378-5691 Fax: 208-378-5744

Document Log Item Release Notice: this template will become DEPRECATED as EPA exits Lotus Notes for e-mail. Replacement tool information can be found at this link: http://intranet.epa.gov/ediscovery/ Addressing From To Jim Zokan/R10/USEPA/US David Croxton/R10/USEPA/US@EPA CC BCC Description Subject Date/Time Re: Kalispel wanting and update on PO River Temp 09/20/2012 12:34 PM **TMDL** NPM # of Attachments **Total Bytes** Contributor **David Croxton** 0 5,023 **Processing** Comments Clear Category Non-responsive Release

Document Body

Thanks for forwarding the message. As I mentioned I just want to be timely on a response back to the tribe due to them having not heard anything for a long time.

Thanks

Body

James F. Zokan, Environmental Specialist

US EPA, Idaho Operations Office 950 W. Bannock Street (Suite 900)

Boise, ID 83702

Office: 208-378-5691 Fax: 208-378-5744

zokan.jim@epa.gov

David Croxton Hi Jim- I'm home sick today, but checked messa... 09/20/2012 12:43:23 PM

Printed

 From:
 David Croxton/R10/USEPA/US

 To:
 Jim Zokan/R10/USEPA/US@EPA

 Cc:
 Sally Thomas/R10/USEPA/US@EPA

Date: 09/20/2012 12:43 PM

Subject: Re: Kalispel wanting and update on PO River Temp TMDL

Hi Jim-

I'm home sick today, but checked messages. Sally Thomas relayed a similar message to me last week. I contacted HQ and they are taking the lead on a written response to Kalispel. I'll pass on your message to HQ just to keep them moving along.

Jim Zokan Please give me a call. Thanks 09/20/2012 11:27:51 AM

From: Jim Zokan/R10/USEPA/US

To: David Croxton/R10/USEPA/US@EPA,

Date: 09/20/2012 11:27 AM

Subject: Kalispel wanting and update on PO River Temp TMDL

Please give me a call.

Thanks

James F. Zokan, Environmental Specialist US EPA, Idaho Operations Office 950 W. Bannock Street (Suite 900) Boise, ID 83702

Office: 208-378-5691 Fax: 208-378-5744

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Jim Zokan/R10/USEPA/US		David Croxton/R10/USEPA/US@EPA	
СС		BCC	
Description			Form Used: Reply
Subject		Date/Time	
Re: Kalispel wanting and update on PO River Temp TMDL		10/08/2012 12:10 PM	
# of Attachments	Total Bytes	NPM	Contributor
0	2,270		David Croxton
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			Printed

Body

Document Body

Did you hear back from Deane?

James F. Zokan, Environmental Specialist US EPA, Idaho Operations Office 950 W. Bannock Street (Suite 900)

Boise, ID 83702

Office: 208-378-5691 Fax: 208-378-5744

Kate Kelly/R10/USEPA/US@EF CC BCC	
Kate Kelly/R10/USEPA/US@EF CC BCC	
CC BCC James Werntz/R10/USEPA/US@EPA	
James Werntz/R10/USEPA/US@EPA	
Description F	orm Used: Memo
Subject Date/Time	
Feds, Kalispel Tribe sign deal to help Idaho trout 08/07/2012 07:48 AM	
# of Attachments Total Bytes NPM	Contributor
0 6,139	David Croxton
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Feds, Kalispel Tribe sign deal to help Idaho trout

SPOKANE, Wash. (AP) -- Three federal agencies and the Kalispel Tribe have reached an agreement to spend \$39.5 million over the next decade to improve stocks of native bull trout and westslope cutthroat trout in northern Idaho's Lake Pend Oreille watershed.

The money will be spent on a variety of projects intended to improve populations of trout species whose numbers have diminished since the 1950s, when the Albeni Falls Dam was built on the Pend Oreille River.

But the accord aims to do more than restore fish numbers and improve angling. Tribal officials point to the cultural significance tied to the fish and to rekindling the centuries-old fishing traditions used by their ancestors on Lake Pend Oreille, the Pend Oreille River and its tributaries.

"At some point in the future, we want our people to be able to harvest these fish again, and everyone else to be able to harvest them, too," Deane Osterman, executive director for the Kalispel Tribe's Natural Resources Department, told the Spokesman-Review (http://bit.ly/NwW016). "We want the improvements to benefit the entire community."

Bull trout are listed as a threatened species in Idaho and Washington, and westslope cutthroats are considered a species of concern. Fish biologists typically link health populations of both species with pristine, healthy watersheds.

Some older anglers can recall the days of reeling in trophy bull trout and cutthroat from the Pend Oreille system, according to Jim Fredericks, regional fisheries manager for the Idaho Department of Fish and Game. Lake Pend Oreille holds the world record for the largest bull trout: a 32-pounder caught in 1949.

Idaho officials cheer the idea of restoring the species in numbers that would enable anglers to keep a limited number. Rules now require anglers to put back both species, even though Lake Pend Oreille supports one of the West's healthiest remaining bull trout runs.

In 2008, the lake's bull trout population was estimated at 8,000 spawning adults. But that total is a fraction of its historic, pre-dam levels, when the bull trout had access to more than 200 miles of spawning streams, said Joan Jewett, spokeswoman for the U.S. Fish and Wildlife Service.

A central goal of the project is restoring fish passage over or around the 90-foot dam, Osterman said. The dam was built without fish ladders and prevents young gull trout from migrating upstream to Lake Pend Oreille, where the fish historically have matured into adulthood before swimming back downstream to spawn.

The dam also altered river flows, creating warmer pools of water. As part of the accord, the tribe and federal agencies will collaborate on dam operations, hoping to manage flows in a way that sends cooler water into the system for bull trout in late summer and fall.

Money also will be spent on acquiring and protecting habitat, researching the viability of building a hatchery and removing non-native, predatory fish from tributary spawning streams.

The three federal agencies involved in the accord include: the Bonneville Power Administration, U.S. Army Corps of Engineers and the Bureau of Reclamation.

James F. Zokan, Environmental Specialist US EPA, Idaho Operations Office 950 W. Bannock Street (Suite 900) Boise, ID 83702 Office: 208-378-5691 Fax: 208-378-5744

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Addressing				
From		То		
Jim Zokan/R10/USEPA/US		David Croxton/R10/USEPA/US@EPA		
cc		ВСС		
Sally Thomas/R10/USEP	A/US@EPA			
Description			Form Used: Reply	
Subject		Date/Time		
Re: Fw: check-in with Kalispel Tribe		10/01/2012 09:42 AM		
# of Attachments	Total Bytes	NPM	Contributor	
0	8,236		David Croxton	
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Comments				
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Body

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Please let me know when you do connect with Deane.

Thanks

James F. Zokan, Environmental Specialist US EPA, Idaho Operations Office 950 W. Bannock Street (Suite 900)

Boise, ID 83702

Office: 208-378-5691 Fax: 208-378-5744

zokan.jim@epa.gov

David Croxton Sarah, Your understanding is correct that the req... 09/24/2012 04:40:08 PM

From: David Croxton/R10/USEPA/US
To: Sarah Furtak/DC/USEPA/US@EPA

Cc: Eric Monschein/DC/USEPA/US@EPA, Ruth Chemerys/DC/USEPA/US@EPA, James

Curtin/DC/USEPA/US@EPA, Jim Zokan/R10/USEPA/US@EPA

Date: 09/24/2012 04:40 PM

Subject: Re: Fw: check-in with Kalispel Tribe

Sarah,

Your understanding is correct that the request came from an in-person meeting with R10's Tribal Program. I called Deane today and left a message. I will let you know when I hear back from him.

thanks, Dave

Sarah Furtak Hi Dave, Thanks again for checking in following t... 09/24/2012 10:31:32 AM

From: Sarah Furtak/DC/USEPA/US

To: David Croxton/R10/USEPA/US@EPA,

Cc: Eric Monschein/DC/USEPA/US@EPA, Ruth Chemerys/DC/USEPA/US@EPA, James

Curtin/DC/USEPA/US@EPA, Jim Zokan/R10/USEPA/US@EPA

Date: 09/24/2012 10:31 AM

Subject: Re: Fw: check-in with Kalispel Tribe

Hi Dave,

Thanks again for checking in following the request for an update from the Kalispel Tribe.

My understanding is that this request came from the tribe via an in-person meeting or phone call, correct?

After checking in with Eric and Jim Curtin (OGC), it sounds like the best means for Region 10 to respond to the tribe might be the way the tribe inquired with the Region (e.g., via phone). Our general message is 'Thank you for your request for an update following Kalispel Tribe's visit to EPA HQ July 24. We are still considering the info the Tribe provided to us, and reviewing the draft TMDL.'

If you have any questions or need more from me, please let me know. If you'd like me or Jim Curtin to be part of a call, we'll be happy to do so. I hope this helps!

Thanks.

Sarah

Sarah Furtak

U.S. Environmental Protection Agency Office of Wetlands, Oceans, and Watersheds Assessment and Watershed Protection Division Watershed Branch EPA West Building, Room 7330-A 1301 Constitution Avenue, NW Washington, DC 20004 Phone: (202) 566-1167

David Croxton

Hi Sarah- Just checking-in on this matter so that...

09/19/2012 01:10:00 PM

From: David Croxton/R10/USEPA/US
To: Sarah Furtak/DC/USEPA/US@EPA

Date: 09/19/2012 01:10 PM

Subject: Fw: check-in with Kalispel Tribe

Hi Sarah-

Just checking-in on this matter so that we get back to the Kalispels soon. thanks ----- Forwarded by David Croxton/R10/USEPA/US on 09/19/2012 10:08 AM -----

From: David Croxton/R10/USEPA/US

To: Sarah Furtak/DC/USEPA/US@EPA, Eric Monschein/DC/USEPA/US@EPA,

Date: 09/17/2012 10:20 AM Subject: check-in with Kalispel Tribe

At a recent meeting on another topic, Deanne Osterman of the Kalispel Tribe mentioned to R10's Tribal Assistance Unit Manager that he had not heard anything from EPA since their meeting with us in D.C. and wondered what was going-on. I can call Deane and give him an update, but it may be more appropriate coming from HQ. Let me know how you would like to manage a status call to the Kalispel Tribe. thanks

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Addressing				
From		То		
Jim Zokan/R10/USEPA/US		Sarah Furtak/DC/USEPA/US@EPA		
СС		ВСС		
Description			Form Used: Memo	
Subject		Date/Time		
Fw: Follow-up to Kalispel Tribe Visit		10/09/2012 04:30 PM		
# of Attachments	Total Bytes	NPM	Contributor	
6	2,420,551		Sarah Furtak	
Processing				
Comments				
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Body

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Thanks

James F. Zokan, Environmental Specialist

US EPA, Idaho Operations Office 950 W. Bannock Street (Suite 900)

Boise, ID 83702

Office: 208-378-5691 Fax: 208-378-5744

zokan.jim@epa.gov

----- Forwarded by Jim Zokan/R10/USEPA/US on 10/09/2012 05:30 PM -----

From: David Croxton/R10/USEPA/US
To: Jim Zokan/R10/USEPA/US@EPA

Date: 10/09/2012 04:55 PM

Subject: Fw: Follow-up to Kalispel Tribe Visit

Jim- Received this message from HQ today. It appears Deane contacted Sarah directly.

---- Forwarded by David Croxton/R10/USEPA/US on 10/09/2012 03:54 PM -----

From: Sarah Furtak/DC/USEPA/US
To: dosterman@kalispeltribe.com,

Cc: David Croxton/R10/USEPA/US@EPA, Don Martin/R10/USEPA/US@EPA

Date: 10/09/2012 03:33 PM

Deane,

Thanks for your request for an update following Kalispel Tribe's visit to EPA HQ July 24. We are still considering the information Kalispel Tribe provided to us, and reviewing the draft TMDL.

Per your request, I've included participants of our July 24 meeting below, with their email contact information.

Michael Haire haire.michael@epa.gov reichert.julie@epa.gov yuan.lester@epa.gov steve Whitlock Jim Curtin haire.michael@epa.gov reichert.julie@epa.gov yuan.lester@epa.gov curtin.james@epa.gov

Tod Siegal siegal.tod@epa.gov
Felicia Wright wright.felicia@epa.gov
Sarah Furtak furtak.sarah@epa.gov
Eric Monschein monschein.eric@epa.gov
Ruth Chemerys chemerys.ruth@epa.gov

David Croxton croxton.david@epa.gov
Ben Cope cope.ben@epa.gov
Helen Rueda rueda.helen@epa.gov
Kim Owens owens.kim@epa.gov
Don Martin martin.don@epa.gov

If you have any further questions, please let me know.

Sarah

Sarah Furtak

U.S. Environmental Protection Agency Office of Wetlands, Oceans, and Watersheds Assessment and Watershed Protection Division Watershed Branch EPA West Building, Room 7330-A 1301 Constitution Avenue, NW Washington, DC 20004 Phone: (202) 566-1167

---- Forwarded by Sarah Furtak/DC/USEPA/US on 10/09/2012 06:16 PM -----

From: Sarah Furtak/DC/USEPA/US
To: dosterman@kalispeltribe.com

Cc: David Croxton/R10/USEPA/US@EPA, Don Martin/R10/USEPA/US@EPA

Date: 08/01/2012 05:54 PM

Subject: Summary: Kalispel/EPA meeting July 24

Deane,

Thank you for having visited to present the Kalispel Tribe's perspective on the draft Pend Oreille Temperature TMDL.

Below please find a summary of the Kalispel Tribe visit to EPA Headquarters on July 24.

Cordially,

Sarah

Sarah Furtak

U.S. Environmental Protection Agency Office of Wetlands, Oceans, and Watersheds Assessment and Watershed Protection Division Watershed Branch EPA West Building, Room 7330-A 1301 Constitution Avenue, NW Washington, DC 20004 Phone: (202) 566-1167

Pend Oreille River Temperature TMDL Meeting
Kalispel Tribe of Indians and EPA
July 24, 2012 – 1:00 to 3:00 pm EST
2530 Ariel Rios North, EPA Headquarters, Washington, D.C.

Purpose: The Kalispel Tribe visited to present "Protecting the Sovereignty of the Kalispel Tribe in the Pend Oreille River Temperature TMDL" to an HQ informal technical review team as part of the consultation process. The Tribe's objective, according to the agenda, was "To ensure that the Pend Oreille River Temperature TMDL accurately describes all violations of Kalispel temperature criteria, as determined by the Tribe, and includes allocations that remedy those violations."

Attendees: Kalispel Tribe and Representatives

Ray Pierre, Vice Chairman, Kalispel Tribe

April Pierre, Communication Director, Kalispel Tribe

Deane Osterman, Executive Director, Kalispel Tribe Natural Resources

Department

Rick Desimone, Consultant for the Kalispel Tribe Zach Welcker, Attorney for the Kalispel Tribe

Ken Merrill, Water Resources Manager, Kalispel Tribe Natural Resources

Department (via phone)

Joel Massmann, Ph.D., P.E., Keta Waters (via phone)

EPA Headquarters

(Informal Technical Review Team)

Michael Haire, National TMDL Coordinator, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division, Watershed Branch Julie Reichert, Oak Ridge Institute for Science and Education Participant, Office of Wetlands, Oceans and Watersheds, Assessment and Watershed Protection Division, Watershed Branch

Lester Yuan, Statistician, Office of Science and Technology, Health and Ecological Criteria Division

Steve Whitlock, TMDL Modeler, Office of Science and Technology, Health and Ecological Criteria Division

James Curtin, Attorney, Office of General Counsel

(Other HQ Participants)

Tod Siegal, Attorney, Office of General Counsel

Felicia Wright, Tribal Coordinator, Office of Water

Sarah Furtak, Listing and TMDL Staff, Office of Wetlands, Oceans, and

Watersheds, Assessment and Watershed Protection Division, Watershed Branch

Eric Monschein, Acting Chief, Watershed Branch

Ruth Chemerys, Acting Associate Chief, Watershed Branch

EPA Region 10 (via videoconference/phone)

David Croxton, Manager, Office of Water and Watersheds, Watershed Unit Ben Cope, Environmental Engineer, Office of Environmental Assessment Helen Rueda, TMDL Staff, Office of Water and Watersheds Kim Owens, Attorney, Office of Regional Counsel

Don Martin, TMDL Staff, Office of Water and Watersheds, Coeur d'Alene Field Office

Agenda: EPA opened the meeting by welcoming the Tribe, and stating that HQ has not made any decision about the Pend Oreille TMDL for temperature, and has no preconceived determination as to the EPA's approval or disapproval of the TMDL. EPA stated it is open to Kalispel Tribe's perspective and presentation and that EPA perceives the meeting as an important opportunity to obtain the Tribe's views for consideration by EPA.

The Kalispel Tribe expressed concern about hydroelectric development in the Pend Oreille River and the implications for bull trout and other fish that the Tribe's water quality standards are designed to protect. The Tribe also expressed concern about the technical reasoning, from the Tribe's perspective, for selecting the cumulative frequency analysis statistical methodology for determining compliance with the Tribe's water quality standards. The Kalispel Tribe and representatives presented "Protecting the Sovereignty of the Kalispel Tribe in the Pend Oreille River Temperature TMDL" and referred to the Keta Waters report (presentation and report attached).

EPA asked clarifying questions during the presentation.

Next Steps: EPA HQ will work expeditiously to provide legal, technical, and policy input to the Region as the Region reviews the State of Washington's Pend Oreille temperature TMDL. EPA explained that it could not provide the Kalispel Tribe a specific time frame on next steps at this time; however, it is likely that HO will have follow-up questions for the Region and asked if it may reach out to the Kalispel Tribe should questions arise. The Kalispel Tribe expressed openness to any additional questions EPA may have, and expressed hope for having open, meaningful discussion about this TMDL going forward.





POR Temperature TMDL Presentation to EPA HQ 7 24 12.pptx Keta Waters July 21 12.pdf

----- Forwarded by Sarah Furtak/DC/USEPA/US on 10/09/2012 06:16 PM -----

Sarah Furtak/DC/USEPA/US From:

Michael Haire/DC/USEPA/US@EPA, Julie Reichert/DC/USEPA/US@EPA, Lester To:

Yuan/DC/USEPA/US@EPA, Steve Whitlock/DC/USEPA/US@EPA, James

Curtin/DC/USEPA/US@EPA

David Croxton/R10/USEPA/US@EPA, Ben Cope/R10/USEPA/US@EPA, Helen Cc:

Rueda/R10/USEPA/US@EPA, Kim Owens/R10/USEPA/US@EPA, Don

Martin/R10/USEPA/US@EPA, zwelcker@kanjikatzen.com

Date: 08/01/2012 06:02 PM 7/24 Meeting Follow Up Subject:

Attached please find documents and a hyperlink from the Kalispel Tribe attorney. These materials are responsive to several of the questions raised by the informal technical review team at the July 24 EPA/Kalispel Tribe meeting.

Sarah

Sarah Furtak

U.S. Environmental Protection Agency Office of Wetlands, Oceans, and Watersheds Assessment and Watershed Protection Division Watershed Branch EPA West Building, Room 7330-A 1301 Constitution Avenue, NW Washington, DC 20004

Phone: (202) 566-1167

----- Forwarded by Sarah Furtak/DC/USEPA/US on 08/01/2012 05:55 PM -----

From: "Zach Welcker" <zwelcker@kaniikatzen.com>

Sarah Furtak/DC/USEPA/US@EPA To:

"Deane Osterman" <dosterman@kalispeltribe.com> Cc:

07/31/2012 10:29 PM Date: Subject: 7/24 Meeting Follow Up

Sarah:

The attached documents and hyperlink below contain information that is responsive to several of the questions raised by the panel at the Kalispel Tribe's meeting with EPA Headquarters on July 24, 2012. They establish several points:

- 1) Dr. Massmann's report shows that Ecology's cumulative frequency analysis ("CFA") does indeed mask violations of Washington water quality standards at the Idaho-Washington stateline. It also demonstrates that water flowing across stateline is warmer under existing conditions than it was under natural conditions on most days when there are violations of Kalispel water quality standards.
- 2) The highlighted text in the other attachments establishes:
 - a. Ecology employed a 7-day rolling CFA in response to the regulated community's concerns about lag time, and concluded that the results were similar to a pairwise analysis.
 - b. Ecology employed a 30-day CFA and found that the level of impairment was almost the same as a 7-day CFA. Senior Ecology staff supported applying the 30-day CFA as a means of diffusing an argument from the regulated community about lag time, reasoning that the point is there is still an impairment. Ecology did not provide a scientific basis for using a 30-day CFA.
 - c. Ecology knew that a 60-day CFA would begin to mask impairment as early as April 2008.
- 3) The water quality standards at issue in the Willamette TMDL are based on a seven-day moving average of daily maximum temperature. See Willamette TMDL at 4-8, available at http://www.deq.state.or.us/wq/tmdls/docs/willamettebasin/willamette/chpt4temp.pdf. Application of CFA to a 7-DADMax metric does not support applying CFA to the Kalispel Tribe's or State of Washington's 1-DMax temperature standard.

I would very much appreciate it if you would confirm receipt of this email, add the email and attachments to the administrative record, and forward the email on to the members of the review panel and Region 10 (please cc me). Please let us know if the panel has any other questions.

Many thanks.

Zach

Zach Welcker Kanji & Katzen, PLLC 401 2nd Ave. S., Suite 700 Seattle, WA 98104 (206) 344-8100 zwelcker@kanjikatzen.com www.kanjikatzen.com

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Keta_Waters_July_31_12.pdf Pickett 7-day v. 30-day comparison table.pdf Potential 30-day pooling period.pdf



Rolling 7-day average docs.pdf